

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA

FILED
for Roanoke
OCT 23 2012
JULIA C. DUDLEY, CLERK
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UNITED STATES OF AMERICA

Case No. 7:94-cr-40106-4

v.

§ 2255 MEMORANDUM OPINION

PATRICK EARL FRANCIS,
Petitioner.

By: Hon. Jackson L. Kiser
Senior United States District Judge

Petitioner Patrick Earl Francis, a federal inmate proceeding pro se, filed a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. After reviewing the record, I dismiss the motion as successive.

A district court may consider a second or successive § 2255 motion only upon specific certification from the Fourth Circuit Court of Appeals that the claims in the motion meet certain criteria. See 28 U.S.C. § 2255(h). Court records indicate that petitioner has previously filed a § 2255 motion regarding the same conviction and/or sentence. See, e.g., Francis v. United States, No. 7:05-cv-00789, 7:05-cv-00363, 7:04-cv-00250, 7:99-cv-00420 (W.D. Va.). Thus, petitioner's current § 2255 motion is a second or subsequent one under § 2255(h). As petitioner has not submitted any evidence of having obtained certification from the United States Court of Appeals for the Fourth Circuit to file a second or successive § 2255 motion, I must dismiss the action without prejudice. Based upon my finding that the petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner.

ENTER: This 23rd day of October, 2012.

[Signature]
Senior United States District Judge